



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on September 25, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit;
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing in person and provided affirmed testimony.

The Tenants testified the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt on September 29, 2017. I find the Tenants' Application package was received by the Landlord on September 29, 2017, in accordance with the *Act*.

The Landlord submitted digital evidence in response to the Application. It was received at the Residential Tenancy Branch on April 24, 2018, two days before the hearing. More importantly, the Landlord confirmed during the hearing that it was not served on the Tenants. As the Landlord's evidence was not served on the Tenants in accordance with the *Act* and the Rules of Procedure, I find that it is excluded from consideration in this proceeding.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Tenants submitted a copy of the tenancy agreement between the parties into evidence. It confirmed that a fixed-term tenancy began on July 1, 2016, and was expected to end on July 1, 2017. The agreement confirmed the tenancy could continue on a month-to-month basis thereafter. However, the parties entered into a new tenancy agreement, effective July 1, 2017, with rent due in the amount of \$1,170.00 per month. The Tenants vacated the rental unit on August 31, 2017. A security deposit of \$500.00 and a pet damage deposit of \$100.00 is held by the Landlord.

First, the Tenants claimed \$340.00 as an overpayment of rent. The Tenants testified they were approached by the Landlord at the end of July 2017, seeking a rent increase. The Tenants agreed and signed a new tenancy agreement, dated July 1, 2017. A copy of the new agreement was submitted into evidence. In the new agreement, rent was increased to \$1,170.00 per month. As the Tenants had already provided the Landlord with rent cheques for July 1 (\$1,000.00) and August 1, 2017 (\$1,000.00), the Tenants provided an additional cheque to the Landlord for the difference in the amount of \$340.00. The Tenants testified the additional rent cheque was written at the end of July but was back-dated to July 1, 2017. The copy of the cheque was submitted into evidence and confirmed the cheque was processed on July 28, 2017.

The Landlord did not dispute the Tenants' evidence. However, he stated the rent increase was necessary to offset the increased costs to the Landlord because of an "illegal" occupant in the rental unit.

Second, the Tenants claimed \$1,200.00 for double the security deposit and pet damage deposit held by the Landlord. The Tenants testified they provided the Landlord with her forwarding address in writing in a letter that was sent to the Landlord by registered mail on September 2, 2017. A copy of the letter and a Canada Post registered mail receipt were submitted into evidence by the Tenant.

In reply, the Landlord confirmed he received the Tenants' forwarding address but could not recall the date. He testified that he retained the security deposit and pet damage deposit because of cleaning and repairs needed at the end of the tenancy. In particular, the Landlord referred to a hole left in the carpet by the Tenants. The Landlord testified the rental unit had been renovated and was "immaculate" just before the tenancy began. The Landlord confirmed he did not make a claim against the deposits by filing an application for dispute resolution.

Finally, the Tenants claimed \$100.00 in recovery of the filing fee paid to make the Application.

Analysis

Based on the unchallenged documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The Tenants claimed \$340.00 as an overpayment of rent from July 1 to August 31, 2017. Policy Guideline #37 provides assistance when considering an application with respect to an alleged rent increase. It states:

A tenant may agree to, but cannot be required to accept, a rent increase that is greater than the maximum allowable amount unless it is ordered by an arbitrator. If the tenant agrees to an additional rent increase, that agreement must be in writing. The tenant's written agreement must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars) and the tenant's signed agreement to that increase.

The landlord must still follow the requirements in the Legislation regarding the timing and notice of rent increases. The landlord must issue to the tenant a Notice of Rent Increase. It is recommended the landlord attach a

copy of the agreement to the Notice of Rent Increase given to the tenant. Tenants must be given three full months' notice of the increase.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

[Reproduced as written.]

As noted in Policy Guideline #37, a tenant may agree to a rent increase greater than the maximum allowable amount if the parties reduce the agreement to writing. However, the Landlord must follow the requirements of the legislation and provide notice to the tenant in the proper form. The parties agreed on the amount of the rent increase and signed a new written tenancy agreement. However, the Landlord did not provide the Tenants with sufficient notice of the increase in the correct form. As a result, I find the Landlord did not follow the requirements of the *Act*. Accordingly, I find the Tenants are entitled to a monetary award in the amount of \$340.00 as reimbursement for the rent overpayment.

The Tenants also claimed \$1,200.00, which is double the amount of the security deposit and pet damage deposit held by the Landlord. Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* states the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the evidence confirmed the Tenants sent the Landlord a forwarding address in writing by registered mail on September 2, 2017. Pursuant to sections 88 and 90 of the *Act*, documents sent in this manner are deemed to be received five days later. I find the Landlord is deemed to have received the Tenants' forwarding address on September 7, 2017. Accordingly, the Landlord had until September 22, 2017, to repay the deposits or make a claim against them by filing an application for dispute resolution. The Landlord confirmed during the hearing that he has done neither. Accordingly, I find the Tenants have demonstrated an entitlement to a monetary award of \$1,200.00, which is double the amount of the security deposit and pet damage deposit held by the Landlord.

Finally, having been successful, I find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$1,640.00, which has been calculated as follows:

Claim	Amount
Rent overpayment:	\$340.00
Double security deposit:	\$1,200.00
Filing fee:	\$100.00
TOTAL:	\$1,640.00

Conclusion

The Tenants are granted a monetary order in the amount of \$1,620.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 26, 2018

Residential Tenancy Branch